

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4103 of 1997

SPECIAL CIVIL APPLICATION NO. 4104 OF 1997

SPECIAL CIVIL APPLICATION NO. 4105 OF 1997

SPECIAL CIVIL APPLICATION NO. 3974 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANTKUMAR DAHYABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4103 to 4105 of 1997
MR RM CHHAYA for Petitioner
MR.SP DAVE ASSTT.GOVET PLEADER for Respondent No. 1, 2
2. Special Civil Application No. 3974 of 1997
MR BA VAISHNAV. for Petitioner
MR SP DAVE ASSTT.GOVET. PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 01/10/97

ORAL JUDGEMENT

Rule.

Mr.S.P.Dave, learned AGP waives service of Rule for respondents.

2. The petitioners in this group of petitions are dealing in petroleum product (viz. diesel)for the last few decades. The persons selling diesel are required to obtain licence under the Gujarat Essential Articles (licensing, Control and Stock Declaration) Order 1981 (hereinafter referred to as the Order of 1981) There is no dispute that all the petitioners are holding their respective licences under the aforesaid Order of 1981 for last more than 15 years. Admittedly, the term of the licence granted to the petitioners is upto December 31, 2000.

3. The petitioners are dealers selling diesel in the rural areas. The petitioners obtain diesel from the persons appointed by Oil Companies and sell diesel in retail in rural areas. The farmers and other persons plying tractors and such other vehicles purchase diesel from the petitioners and such other licence holders.

4. The petitioners in Special Civil Application Nos.4103 to 4105 of 1997 have approached this Court for challenging the decision taken by the respondents to cancel the petitioners' respective licences for diesel. The mamlatdar, who is the licensing authority, has issued cancellation order intimating the petitioners that as per the Government policy the licences will be continued only in favour of those persons who are recognized dealers of the Oil Companies. The ground for taking such decision is that diesel is covered by the provisions of Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order 1990 (hereinafter referred to as the Order of 1990 or Central Government Order) promulgated by the Government of India in the Ministry of Petroleum and Chemicals on September 22, 1990 and published in the Government of India Gazette dated September 25, 1990. In the said Order of 1990 "dealer" is defined as under:

"dealer" means a person appointed by an Oil Company to purchase, receive, store and sell motor spirit and high speed diesel oil whether or not in conjunction with any other business and shall include his representatives, employees or agents"

The learned AGP has submitted that since the petitioners are not appointed by any oil company to purchase,

receive, store and sell motor spirit and high speed diesel oil, the petitioners cannot be considered as dealers for the purpose of aforesaid Order of 1990 and therefore, the licences issued in their favour in 1995 with validity period upto December 31, 2000 must be cancelled.

5. The learned Counsel for the petitioners have submitted that the definition of "dealer" in the Central Government Order is not restrictive but wide enough to include the representatives, employees or agents of a dealer of any Oil Company and, therefore, the petitioners who are retailers and purchasing diesel from the persons appointed by the Oil Company must be treated as agents or representatives of the persons appointed by the Oil Company. It is submitted that the licence issued by the Government under the Licence Order of 1981 is for the purpose of ensuring that the persons dealing in essential articles comply with certain procedural requirements imposed by the Government in exercise of the powers conferred by the Government under the Essential Commodities Act and that the respondents cannot deprive the petitioners of their right to carry on their business in accordance with the respective licences issued in their favour which are valid upto December 31, 2000 when there is not even any allegation about breach of any term and condition of the licence.

6. The learned Counsel for the petitioners have relied upon a decision of this Court in Special Civil Application Nos. 2, 21, 22 of 1994 and other matters decided by this Court (Coram: Hon'ble Mr. Justice C.K. Thakkar) on April 26, 1994. In that group of petitions also the licences issued by the Licensing authority in favour of those petitioners were sought to be cancelled before the expiry of the term specified in the licence without any allegation about the breach of any term and condition of the licence. This Court quashed the cancellation notices and directed the authorities to permit the petitioners to do business as per the licences granted to them upto the period for which the licences were granted and/or renewed and operative with a clarification that it was for the authorities to pass appropriate orders after the licence period was over and that even during the licence period it was open to the authorities to pass appropriate orders for the breach of the terms and conditions of the order and after following the principles of natural justice and fair play. It was also held in the aforesaid decision that no adverse order can be passed for cancellation of licence without complying with the principles of natural

justice.

7. Learned Counsel for the petitioners have also relied on the decision of the Supreme Court in the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, AIR 1990 SC 1031 particularly on the following observations made therein :-

"..we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available, in public law field. It appears to us that in respect of Corporation like IOC when without informing the parties concerned, as in the instant case of the appellant firm herein on alleged change of policy and on that basis action to seek to bring to an end and course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. ."

The grievance of the learned Counsel for the petitioners is that before taking the impugned decision that the petitioners and other licence holders, who are not directly appointed as dealers by the Oil Company, should not be treated as dealers and therefore, the licences of such persons should be cancelled, the State Government has not taken the petitioners and other similarly situated persons into confidence. If the Government had made any such attempt, the petitioners would have pointed out that the definition of "dealer" is very wide as it includes not only the persons appointed by the oil Company but also employees, representatives and agents of such persons appointed by the dealers of the oil Company and further that if such interpretation did not appeal to the authorities, the petitioners would have made attempts to get dealership from the oil companies.

Mr.Chhaya for the petitioners conceded that notice was issued to each of the petitioners but unfortunately such notice was issued by Mamlatdar, whereas the policy decision was already earlier taken by the Government and therefore, there was no effective

hearing or fair play in action.

8. It is an admitted position that the impugned cancellation orders are not issued on account of breach of any term or condition of licence. Therefore, in view of the aforesaid decision of this Court as well as the Apex Court it must be held that the impugned decision of the Government to cancel the licence of the persons like the petitioners during their validity period and without taking them into confidence must be held to be arbitrary and violative of Article 14 of the Constitution of India. The cancellation orders are, therefore, required to be quashed and set aside.

9. As far as Special Civil Application No. 3974 of 1997 is concerned, it is true that the petitioner has challenged a show cause notice issued by the Mamlatdar, who is licensing authority, but the grievance of the learned Counsel for the petitioner is the same that the licence is valid till December 31, 2000 and that the show cause notice is not on account of breach of any term or condition of the licence. Moreover, the notice is issued by the mamlatdar but such notice or hearing will not serve any purpose because the Government has already taken the decision to cancel such licences on the ground which is discussed hereinabove and , therefore, the petitioner in this case also may be given the same reliefs which are being granted to the petitioners in the above mentioned petitions.

The grievance made by Mr.Vaishnav for the petitioner appears to be justified and no useful purpose would be served by rejecting the petition only on the ground that it is filed at the stage of show cause notice when the officer has indicated that he is bound by the decision of the higher authorities.

10. In the result, the impugned orders and notices for cancellation of petitioners' licences are quashed and set aside and the respondents are directed to permit the petitioners to carry on their business in accordance with the licence/s already issued to them upto the period for which the licences have been granted and/or renewed and are operative. Even during licence period it is open to the authorities to pass appropriate orders after following the principles of natural justice and fair play in case any petitioner is alleged to have committed any breach of terms and conditions of licence.

11. It is clarified that this order is being passed in view of the fact that validity period of the

respective licences of the petitioners has not expired and the petitioners are not found to have committed breach of any term and condition of the licence. This order, therefore, shall not come in the way of the authorities in taking appropriate decision when the question for renewal of licence arises. In the meantime it will be open to the petitioners to approach the authorities to accept the petitioners' interpretation of the definition of dealer and/or to approach the Oil Companies to get direct dealership so that the petitioners are not handicapped at the time when the question of renewal arises.

12. Rule is made absolute in all the matters to the aforesaid extent with no order as to costs.

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